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NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT

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May 25, 2017

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Randall Alan Wolf
Doug Frost, Chief Operating Officer
Tom Brown, Facility Storm Water Manager
Walters & Wolf Precast
41777 Boyce Road
Fremont, CA 94538

Randall Alan Wolf
Agent for Service of Process
Walters & Wolf Precast
41450 Boscell Road
Fremont, CA 94538

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Mr. Wolf, Mr. Frost, and Mr. Brown:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at Walters & Wolf Precast's industrial facility located at 41777 Boyce Road, Fremont, California 94538 (the "Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the state's fishery resources and the aquatic ecosystems they depend on. This letter is being sent to Walters and Wolf Precast, Randall Wolf, Doug Frost, and Tom Brown as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "Walters & Wolf").

This letter addresses Walters & Wolf's unlawful discharge of pollutants from the Facility into channels that flow into the South San Francisco Bay. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2014-0057-DWQ ("2015 Permit"). The 1997 Permit was in

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effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") is 2 01S015357. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

This letter follows CSPA's January 27, 2017 Notice of Violations and Intent to File Suit letter ("January 2017 NOV") that it sent Walters & Wolf. This letter includes additional violations that were not included in the January 2017 NOV. This supplemental notice is not intended to alter or withdraw any violations identified in the January 2017 NOV. A copy of the January 2017 NOV is attached hereto and incorporated by reference.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Walters & Wolf on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Walters & Wolf under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Walters & Wolf certifies that the Facility is classified under SIC codes 3299 and 3272. The Facility collects and discharges storm water from its 26-acre industrial site through at least three outfalls. On information and belief, CSPA alleges that two of the three outfalls contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. On information and belief, CSPA alleges that the outfalls discharge to a man-made canal that discharges into the South San Francisco Bay.

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II. Alleged Violations of the NPDES Permit.

A. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

The General Permit requires that the samples that are collected and analyzed be representative of the facility's storm water discharges. Section B(7)(a) of the 1997 Permit requires facility operators to "collect samples of storm water discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges from the storm event." The 2015 Permit similarly requires samples to be "[r]epresentative of storm water associated with industrial activities." 2015 Permit § XI(B)(4)(a). If the facility's storm water discharges are commingled with run-on from surrounding areas, Section B(7)(b) of the 1997 Permit requires the facility operator to "identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility's storm water discharges from the storm event." *See also* 2015 Permit § XI(C)(3)(a). The Facility has consistently violated these monitoring requirements.

On information and belief, CSPA alleges that Walters & Wolf failed to collect and analyze any storm water samples that are representative of the quality and quantity of the Facility's storm water discharges. Instead, Walters & Wolf's Annual Reports, SWPPP, and Level 1 ERA indicate that Walters & Wolf has been collecting samples of its storm water discharges from outfalls L6a and L6b after it has commingled with the off-site run-on from the two MS4s that run through the Facility. Therefore, CSPA alleges that Walters & Wolf failed to sample and analyze any of its storm water discharges from discharge locations L6a and L6b since at least May 25, 2012.

The above results in at least 20 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to

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citizen enforcement actions brought pursuant to the federal Clean Water Act, Walters & Wolf is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least May 25, 2012.

III. Persons Responsible for the Violations.

CSPA puts Walters and Wolf Precast, Randall Alan Wolf, Doug Frost, and Tom Brown on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Walters and Wolf Precast, Randall Alan Wolf, Doug Frost, and Tom Brown on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of CSPA is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue,
Stockton, CA 95204
Tel. (209) 464-5067
E-Mail: deltakeep@me.com

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Rebecca L. Davis
Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
rebecca@lozeaudrury.com
michael@lozeaudrury.com
doug@lozeaudrury.com

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Walters & Wolf to a penalty of up to \$37,500 per day per violation for all violations occurring

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since October 28, 2011 up to and including November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file or amend a citizen suit (to the extent that CSPA files a citizen suit pursuant to its January 2017 NOV) under Section 505(a) of the Act against Walters & Wolf and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the additional violations noted in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis
Lozeau Drury LLP
Attorneys for CSPA

SERVICE LIST – via certified mail

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Bruce H. Wolf, Executive Officer II
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

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ZEAL DRURY LLP
0 12th Street, Ste. 250
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